



In re Estate of Gidraph Nganga Njuguna (Deceased) (Succession Cause 669 of 2003) [2023] KEHC 21597 (KLR) (Family) (28 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21597 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 669 OF 2003
MA ODERO, J
JULY 28, 2023
IN THE MATTER OF THE ESTATE OF GIDRAPH NGANGA NJUGUNA (DECEASED)**

BETWEEN

GRACE NYAMBURA NJUGUNA APPLICANT

AND

MARGARET WANGUI RESPONDENT

RULING

1. Before this Court for determination is the Amended summons dated December 7, 2021 by which the Applicant Grace Nyambura Njuguna seeks the following orders:-
 - “ 1. That this Honourable court be pleased to grant interim orders restraining Margaret Wangu Njuguna , Peter Njoroge Kinyanjui and Kairu Richu by themselves or their servants or agents, or the Lands Registrar, Ruiru Lands Registry or any other person from intermeddling with, interfering, selling, disposing and /or sub-dividing all that parcel of land known as Ruiru East/Juja East Block 2/4550 and Ruiru/Ruiru East Block 4/T952 pending the hearing and determination of this application and summons.
 2. That this Honourable court be pleased to revoke any subdivision titles in respect to the parcel known as Ruiru East /Juja East Block 2/4450 and Ruiru/Ruiru East Block 4/T952 pending the hearing and determination of this application.
 3. That this Honourable court be pleased to issue a grant of probate as per the annexed will/testamentary instruments in favour of Grace Nyambura



Njuguna alias Grace Myambura Karanja, the Applicant herein, and appoint her as the executrix of the unadministered estate of the deceased.

4. That the Officer Commanding Station (OCS) of Juja Police station or nearby Police Station and are hereby ordered to enforce the restraining orders or any other orders given herein, and liaise with the DCI Juja in investigating the irregularities of the titles in respect of the two properties.
5. That costs of the application be in the cause.
2. The Application was premised upon Section 47 of the *Law of Succession Act* Cap 160, Laws of Kenya rule 59 (1) (3) (5), Rule 73 of the *Probate and Administration Rules, 1980* and all other enabling provisions of the law and was supported by the affidavit of even date sworn by the Applicant
3. The Respondent Margaret Wangu opposed the application through the Replying Affidavit dated November 7, 2022. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated March 28, 2022 whilst the Respondent did not file any submissions

Background

4. This succession cause relates to the estate of the late Gidraph Nganga Njuguna who passed away on July 2, 2002. The Deceased was survived by two daughters-in-law namely Grace Nyambura Karanja (the Applicant herein) and Margaret Wangu (the Respondent)
5. The Deceased was said to have died testate having a written will dated August 10, 2001 in which he left the property known as Karai/Karai/T1837 (hereinafter the 'suit land') to the Applicant.
6. Following the demise of the Deceased the Applicant petitioned for a Grant of probate with written will. The Grant was issued to her on November 11, 2015. The Grant was thereafter confirmed on November 15, 2015.
7. The Applicant states that whereas the Deceased only listed the suit. Property in his will she recently became aware of the fact that the Applicant had other properties which were not listed in the written will these included shares in Kenya Commercial Bank, as well as the properties known as LR Ruiru/Ruiru East Block 4/T.952 and Ruiru East/Juja Block 2/4550. She claims that the said assets were also bequeathed to her in another Will dated October 20, 2001 written in Kikuyu. The Applicant now prays to be appointed as Administrator of the remaining unadministered estate of the Deceased. She also prays for injunctive orders to restrain the Respondent and the Registrar land from intermeddling with the two Ruiru Properties.
8. On her part the Respondent states that she is not aware of the two Ruiru Properties. The Respondent further denies having intermeddled with any estate property. Finally, the Respondent states that this court in any event lacks the jurisdiction to handle any dispute over land involving the estate and third parties.

Analysis and Determination

9. I have carefully considered the application before this court. The Reply filed thereto as well as the written submissions filed by both parties.
10. The Applicant claims that LR Ruiru East Block 2/4550 as well as LR Ruiru/Ruiru East Block 4/T 952 are both properties which belonged to the Deceased and therefore form part of his estate.



11. Annexed to the Applicant's Supporting Affidavit is a copy of official Search dated December 21, 2020 in respect of the parcel of land known as Ruiru East/Juja East Block 2/4550. This parcel of land is registered to one Peter Njoroge Kinyanjui and not to the Deceased herein (Annexure GNN '5'). It is not clear on what basis the Applicant claims that this parcel of land belongs to the Deceased.
12. If the Applicant as executrix/Administrator of the estate of the Deceased wishes to pursue a claim on behalf of the estate over that parcel of land then she would need to file a suit before the Environment and Land Court against the registered owner of the said parcel of land.
13. Furthermore, the Applicant did not enjoin the registered owner as a party to this cause. The court will not issue orders against a person who is not a party to this cause and who was not invited to respond to the Amended Summons filed by the Applicant as this would be tantamount to condemning that person unheard.
14. With respect to Title Number Ruiru/Ruiru East Block 4/T 952. The Applicant has annexed a copy of a Title Deed (Annexure GNN'9') which indicated that said parcel of land is registered in the name of Gidraph Nganga Njuguna (the Deceased in this matter). Therefore, this parcel Plot T952 can properly be said to belong to the estate of the Deceased.
15. The Applicant is seeking injunctive orders to prevent any intermeddling in the estate of the Deceased. These orders are sought firstly against the Respondent and secondly, against Peter Njoroge Kinyanjui, Kairu Richu and the Registrar of lands, Ruiru lands Registry.
16. The grounds upon which an injunction may be granted were set out in the case of *Giella Vs Casman Brown* (1973) EA as follows:-

“The conditions for the grant of an interlocutory injunction are well settled in East Africa. First, an Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience”.
17. The definition of a prima facie case was given in *Mrao Ltd Vs First American Bank Of Kenya Ltd And 2 Others* (2003) eKLR as follows

“In civil cases a prima facie case is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. This is clearly a standard, which is higher than an arguable case”.
18. As stated earlier the court will not condemn a person unheard. The Applicant did not seek to enjoin the persons against whom she is now seeking orders in this matter. Neither were these persons served with the Amended Summons and given an opportunity to respond to the same.
19. The Respondent has stated categorically that she is not aware of the parcels of land in Ruiru. There is no evidence of any intermeddling (or threat of interference) in the two parcels of land by the Respondent.
20. With regard to Peter Njoroge Kinyanjui he is the registered owner of Ruiru East/Juja East Block 2/4550. If the Applicant wishes to seek orders to prevent him from enjoying possession and ownership



of his own land, then she ought file a suit in the Environment and Land Court which is the only court with jurisdiction to determine issues of ownership, use and occupation of land in this country.

21. There is no allegation of any intermeddling (or threat) thereof in respect of the two parcels of land by the land Registrar Ruiru. I find that no prima facie case has been established to warrant the issuance of the injunctive orders being sought by the Applicant.
22. Finally, the Applicant has prayed to be appointed as the Administrator of the unadministered portion of the estate of the Deceased. In her initial Petition dated June 12, 2002 seeking Grant of Probate the Applicant indicated that the Deceased died testate and annexed a written will. She was issued with a Grant of probate which was duly confirmed on November 15, 2015. The written will mentioned only one property being Karai/Karai T1837. Under the terms of the will which formed the basis upon which the Grant was issued to the Applicant, the Deceased did not have any other asset/property available for distribution.
23. The Applicant now claims that she has discovered other assets which also belonged to the Deceased therefore and that he bequeathed the remaining assets to her vide the Will dated October 20, 2001 (Annexure GNN '17' to the supporting Affidavit). The Grant which the Applicant now holds cannot be extended for use in administering and/or disposing of the remaining property Assets.
24. Since the Applicant claims that the remaining assets were disposed of by the Deceased in a second Will dated October 20, 2001 she must file a fresh Petition to prove/probate this second Will before she can be appointed Executrix of said properties.
25. In the circumstances, the survivors/heirs of the Deceased must file a fresh Petition for Grant of letters of Administration in respect to the two parcels of land in Ruiru.
26. Finally, based on the foregoing, I find no merit in this application. The same is dismissed with entirety. Costs will be met by the Applicant.

DATED IN NAIROBI THIS 28TH DAY OF JULY, 2023.

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MAUREEN A. ODERO

JUDGE

